GOVERNMENT OF MADRAS.

SECTT. II-28—50,006—12-6-53.

Revenue (1953) Department.

~~Endorsement~~
~~D.O.~~
Memorandum
~~Lodged~~

No. 66032-F/53-1

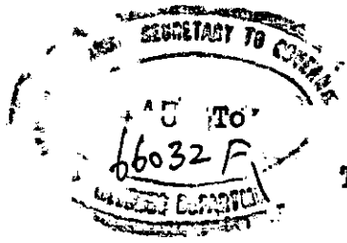
Dated 14-8 1953.

passed
D
subdt
MP

FURTHER PAPERS.

Department.	Number.	Series.	Date.

FOR MYSORE STATE



To Secy Revenue

The Hon'ble Minister for Revenue,

Fort St. George,

Madras.

Humble Memorial of Srimathi Venkamma, daughter of Lingappe and granddaughter of Palli Thimmakke, residing at Palli of Markanja village, Puttur Taluk, S.Kanara. c/o Sri M.M. Shastra, Advocate, Bangalore - address for all communications -) Memorialist Petitioner

Vs.

Kushalappa Gouda, son of Krishnappa Gowda, Amaramudnur village, Puttur Taluk, S.Kanara.) Respondent.

The Memorialist-Petitioner begs to submit as follows:-

1. That palpable injustice has been done to her, a woman cultivator of S.Kanara, by the Revenue authorities including the Hon'ble Board of Revenue, Madras in the matter of the assignment of S.Nos. $\frac{239}{2}$ and $\frac{239}{3}$ of Markanja village, Puttur Taluk, S.Kanara.

2. S.No. $\frac{239}{2}$ is 23 Cents and S.No. $\frac{239}{3}$ 48 Cents in extent. They are no doubt tiny plots but they are contiguous to the plots of the Petitioner and very essential for the cultivation of her adjoining paddy fields.

3. These two plots formed the subject-matter of assignment proceedings in D.R.No. 20/1349, Puttur Taluk, S.K. (about 1943). A brief history in this connection is relevant and important.

S.No. $\frac{239}{2}$

4. The Petitioner's mother, Lingappe, applied

for assignment of S.No. 239/2 on the ground of possession and enjoyment through her son, Sri Subbiah alias Sheshappa Rai. Krishnappa Gowda, father of the Respondent was the banedar, having Kumki rights over it. Adverse possession by Sheshappa Rai had the effect of cancelling the Kumki right. What is more important is that the Respondent's father himself conceded it and gave his consent to the assignment of S.No. 239/2 in the name of Petitioner's mother, Lingappe. But as assignment was not permissible then (being war period), it was entered in the village accounts (No.2 and 7) in the name of Sri Subbaya alias Sheshappa Rai.

5. Sheshappa Rai died in 1942 and the house built by him collapsed in 1943.

6. The assignment question was re-opened in D.R.1426/1357 Puttur Taluk. (1950). During the enquiry, Respondent's father, Krishnappa Gowda withdraws his consent. The Head quarters Deputy Tahsildar assigns it to Krishnappa Gowda (vide D.R.No.1426/1357 of Puttur Taluk. dated 31-7-50). The Revenue Divisional Officer confirms the order in D.Dis.309/19 dated 27-4-51. On revision, the Collector of S.Kanara upheld the two orders mentioned above on the ground that the Kumki right reverted back to the respondent's father since there was no effective possession on the part of the petitioner's predecessors since 1943 after the collapse of the house of Sheshappa Rai.

7. This is not a correct view. If the assignment was to be made in 1943, the assignment should have been made in the name of the petitioner's

mother in D.R.No.20/1349 by consent of the respondent's father. Once a kunki right is lost by adverse possession, it is forever lost, unless it is shown the adverse possession has been superseded by adverse possession.

8. Hence both in law and equity, S.No. $\frac{239}{2}$ should have been assigned to the petitioner's mother in view of adverse possession which continued and also the consent of the respondent's father which could not be withdrawn by him at his sweet will and pleasure.

9. Hence all the orders of the Revenue Authorities including that of the Hon'ble Board are wrong and justice can be done only by assigning S.No. $\frac{239}{2}$ in the name of the petitioner who has filed this petition as the successor-in-title to her mother, Lingappe.

S.No. $\frac{239}{3}$

10. Even in respect of S.No. $\frac{239}{3}$ the claim of petitioner's mother Lingappe was complete. The history of this plot shows that it had a chequered career, so far as its possession was concerned.

11. In the first instance, it was considered as an encroachment by the respondent's father, Krishnappa Gowda and it so appeared in the revenue accounts in 1930.

12. But by 1939, it had changed hands. It

was found in the possession of petitioner's mother, through her son Sheshappa Rai.

13. In D.R.No. 20/1349 (1943) however, Respondent's father denied the claim of adverse possession. But as no assignment could be made then, the occupation by petitioner's mother was recognised, and it was so entered in the village accounts Nos.2 and 7 in the name of Lingappe.

14. Admittedly, the plot contained a house and other improvements. One Kunhakke who was found occupying the house even in 1950 had executed a lease deed in favour of Sheshappa Rai, Lingappe's son.

15. Later leases by Kunhakke in favour of the Respondent's father, Krishnappa Gowda cannot be of any use and cannot be considered as changing possession.

16. Hence, on this clinching evidence the Revenue Divisional Officer. Puttur. set aside the order of the Head Quarters Deputy Tahsildar and assigned S.No. $\frac{239}{3}$ to the petitioner's mother.

17. However, the Collector in revision wrongly assigned it in the name of Respondent's father holding that Kunhakke having attorned to Respondent's father, possession had reverted to Banedar or Kumkidar, Krishnappa Gowda. This finding is certainly untenable on the face of it.

18. The Hon'ble Board of Revenue failed to

note the above-mentioned facts and wrongly refused to interfere.

19. Facts of this case are as plain as pike-staff. One need not go deep into the records. A perusal of the facts mentioned in the Collector's order D.Dis.22824/51 dated 4-10-1951 is sufficient to enable any one to come to a completely different finding from that arrived at by the Collector.

The Memorialist-Petitioner prays that the Hon'ble Minister of Revenue, Madras, may be pleased to right the patent wrong done, and assign S.No. $\frac{239}{2}$ and $\frac{239}{3}$ of Markanja village, to the Petitioner.

Mangalore,
D/- 6- VI -53

Memorialist-Petitioner

6

PROCEEDINGS OF THE BOARD OF REVENUE,
Rt.3889. Chepauk, MADRAS. Dated 5-6- 1952.

Sri W.R.S.Sattianathan, I.C.S., Commissioner of Land Revenue.

Sub: ASSIGNMENT--Land--(South Kanara)--Puttur Taluk--Markanja Village--S.Nos. 239/2 and 3--Revision petition--Rejected.

Read: South Kanara Collector's D.Dis.22824/51 d/ 4-10-51.
Petition of Srimathi Lingappa,d/ 31-12-51.
South Kanara Collector's Ref.No.A1. 302/52-4 d/ 6-3-52.

RESOLUTION:

The Board has perused the connected records and sees no reason to interfere with the order of the Collector. The petition is rejected.

/True Extract/

A.Somasundaram,
Asst. Secy.

ugh Counsel,
No.8 Sppr Tank Road, Egmore, Madras.
uth Kanara. (With the connected records by Regd.
ketch file, (3)R.D.O's D.Dis.309/51 and

Forwarded/By order.

Superintendent. 5/6

nedr.5-6.

D. Dis 22824/51.

Proceedings of the Collector of South Kanara, Mangalore dated 4-10-1951.

Present: Sri: A.R. Rajarathnam, B.A.,

ASSIGNMENT - Land - Puttur Taluk - Markanja Village - S.No. 239/2 and 3 - D.R.No. 1426/57 - Modification - Rev. Divl. Officer's D.Dia No. 309/51 Revisions Petitions - Order passed.

Ref: 1. From Sri Kushalappa Gowda tetition dated 21-8-1951.
2. From the Rev. Divl. Officer, Puttur, R.C.No. 6867/51 dated 24-9-51.
3. From Srimathi Lingappe petition dated 26-8-51.
4. From the Rev. Divl. Officer, Puttur Ref. 7052/51 dated 4-9-1951.

S.Nos. 239/2 and 239/3 Markanja Village in Puttur Taluk measuring 23 cents and 48 cents respectively were assigned to Sri. Krishnappa Gowda by right of bane and enjoyment in D.R.No. 1426/57 of the Hd. Qrs. Dy. Tashildar, Puttur. Against this order, Srimathi Lingappe filed an appeal before the Revenue Divisional Officer, Puttur who in his order D.Dis. 309/51 dated 27-4-1951 confirmed the assignment of S.No. 239/2 but cancelled the assignment of 239/3 and assigned in the name of Srimathi Lingappe. Sri Kushalappa Gowda (Son of Krishnappa Gowda) and Srimathi Lingappe have filed revision petition against the Revenue Divisional Officer's order.

2. I have carefully gone through the records and heard the Advocates of both the parties.

3. S.No. 239/2 Srimathi Lingappe wants this plot to be assigned in her name by right of possession and enjoyment. This plot was in the occupation of her son Sri Subbiah alias Sheshappa Rai in 1939 for more than the period prescribed for adverse possession of kumaki or bane lands. In D.R.No. 20/1349 the bane-~~for~~ Krishnappa Gowda ~~consented~~ consented to the assignment of this plot in the name of Lingappe but as assignment was not permissible then, it was entered in village accounts, Nos. 2 and 7 in the name of Sri Subbayya alias Sheshappa Rai. He died in 1942 and the house built by him in the plot collapsed in about 1943. There is nothing to show that the plot was in the effective enjoyment of either Lingappe or the heirs of the deceased Subbayya alias Sheshayya Rai after 1942. During the proceedings in D.R. 1426/57 Krishnappa Gowda withdrew his previous statement of consent given in favour of Lingappe. In the absence of any proof of adverse possession from 1942 to the date of assignment, it has to be considered that the plot reverted to the bander and I hold that the assignment made in the name of the bander Krishnappa Gowda by the Hd. Qrs. Dy. Tashildar is correct. In the result the revision petition of Srimahti Lingappe is rejected.

4. S.Nos. 239/3: Sri Kushalappa Gowda claims this plot by bane right and possession. It was assigned in his father's name (Krishnappa Gowda) by the Hd. Qrs. Dy. Tashiladar, Puttur but in appeal the Revenue Divisional Officer, Puttur assigned it in the name of Srimathi Lingappe. The records show that this plot was registered as an encroachment in the name of Sri. Krishnappa Gowda in 1930 by the resettlement party. This must have been done after proper enquiry. There is nothing to warrant

a presumption that it was erroneous. In 1939 it was found in the possession of Srimahti Lingappe fpr more than the period prescribed for adverse possession of kumaki or bane -lands. In D.R. 20/1349 Sri Krishnappa Gowda denied adverse possession and objected to the assignemnt of plot in the name of Lingappe. An assignment was not permissible then the occupation was brought to village accounts Nos. 2 and 7 in the name of Lingappe. During the proceedings in D.R. 1426/57 both parties were examined with regards to their claims for the plot. One Srimathi Kunhakke was found to be occupying the house situated in it. She deposed on 19-12-48 that she was the tenant of Sri Krishnappa Gowda and that the house in which she lived was built by her at the instance of Sri Krishnappa Gowda. Srimahthi Lingappe did not produce any proof regarding her possession and enjoyment of the plot either during the enquiry by the Revenue Inspector or before the Hd- Qrs. Dy. Tashildar, Puttur. Sri Krishnappa Gowda produced three lease deeds dated 24-4-45, 3-3-46 and 20-5-48 executed in his favour by Kunhakke. These lease deeds speak of S.No. 239/2 but from the description it is clear that it is S.No. 239/3 that is referred to and not S.No. 239/2. Reference is made to improvements and a house. The fact that there was no house or improvements in S.No. 239/2 after 1943 as stated in para 3 above also shows that it relates to S.No. 239/3. Srimathi Lingappe produced ~~xkm~~ before the Revenue Divisional Officer, Puttur during the appeal a lease dated 11-7-41 executed by Kunhakke in favour of her son Sri Subbayya alias Sheshappa Rai in respect of S.No. 239/1C (representing S.No. 239/3). The plot in question has been entered in village accounts 2 and 7 in the name of Lingappe and there is no reason why it should have been executed in favour of her son when she was alive. It is of an earlier date than those produced by Sri Krishnappa Gowda. No weight can be attached to this lease deed so far as the claim to the plot is concerned. It is therefore evident that the occupation of the plot S.Nos. 239/3 by Srimathi Lingappe ceased fomabout 1943 with the collapse of the house which then existed in it and that Sri Krishnappa Gowda was enjoying the plot through the tenant Kunhakke from 1945 to the date of assignment. The plot was thus reverted to the banedar. In these corcumstances, I set aside the order of the Revenue Divisional Officer, Puttur in regard to this plot and restore that of the Hd-Qrs. Dy. Thasildar, Puttur.

Dicted to Shorthand and typewritten.

(Sd)
~~Collector~~ Collector.

(Typed copy)

To:

The petitioner Sri Kushalappa Gowd through his counsel Sri S. Gopalakrishna Bhat, Advocate, Noojibail House, Mangalore.

The Petitioner Srimathi Lingappe through her counsel Sri. A. Shanker Alva, B.A.B.L., Vakil, Mangalore.

The Tashildar, Puttur with the records of D.R.1426/57 and resettlement sketches.

The Revenue Divisional Officer, Puttur with the records of D.Dis. 309/51

(Fair typed copy)

Please mp 14/8/53

9

Rev Dept

Memo No 66032 F/53-1 dated 14-8-53

Assignment - Land - South Kanara - Puttur taluk - Markanja village - S.No's 239/2 and 3 = Revision petition Rejected.

PP 1-Sep From Srimathi Venkamma petition dated 6-6-53.

The govt see no reason to interfere on behalf of the petitioner. The petition is rejected

mp 14/8/53 8 14/8/53

14/8/53

Vide order paper kept below

To
Srimathi Venkamma
C/o Sri N.N. Suvarna
Advocate, Mangalore
South Kanara district

14/8/53

60

20,002—8-5-53.

ORDER PAPER.

Revenue Department.

Subject. Assignment - Land - South Kanara - Puttur taluk - Markanja village - S.No.239/2 and 3 - Assignment to Sri Krishnappa Gouda - Cancellation - Request.

Recommendations of Circulating Officer.

The petition may be rejected.

Mackps
12853
D.S.Rev

Orders of Ministers.

(1) M(L.R)

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SECRETARY TO GOVERNMENT
18 AUG 1953
REVENUE DEPARTMENT

If orders passed in the Cabinet, Decision of Cabinet.

[Cm 66032 F/53]

Rev Dept

Assignment - Land - South Kanara - Puttur taluk - Markanja village - S.No 239/2 and 3 - Assignment to Sri Krishnappa gowda - cancellation - Revision petition

pp 1-5 cf

From Srimathi Venkamma petition dated 6-6-53

To u/s

Please see the petition and its enclosures in the C.F.

2. For the facts of the case, please see the south Kanara coll's proceedings dated 14-10-51 at pp 7-8 C.F.

para 1 at p 7 cf

3. S.Nos 239/2 and 239/3 of Markanja village, Puttur taluk, South Kanara district measuring 2.3 cents and 14.8 cents respectively were assigned to Sri Krishnappa gowda by right of kane and enjoyment in D.R No 14-26/57 of the Hd Quarters deputy tahsildar Puttur. Against this order, Srimathi Jingappe

† glrd

† filed an appeal before the R.D.G. Puttur who in his order R.Dis.309/51 dated 27-4-51 confirmed the assignment of S.No 239/2 but cancelled the assignment of S.No 239/3 and assigned it in favour of Srimathi Jingappe. Against this order of the R.D.G, Sri Kushalappa gowda, son of Krishnappa gowda and Srimathi Jingappe filed

* glrd

revision petitions to the coll of South

v para 2 at p 7 cf

Kanara. The coll examined the revision petitions with the connected records and also heard the advocates of both the parties. For the reasons given in para 3 of his proceedings, the

p 7 cf

coll rejected the revision petition

(in respect of S.no 239/2).

of Srimathi Jingappa. On the circumstances stated in the concluding para of his proceedings, he set aside the order of the R.D.O., Puttur in regard to S.no 239/3 and restored the order of the Head Quarters Dy Tahsildar, Puttur, assigning this land to Sri Krishnappa Gowda. Against this order of the Coll'r, Srimathi Jingappa submitted a revision petition to the Bd of Rev. The Board refused to interfere with the order of the Coll'r and accordingly rejected the revision petition of Srimathi Jingappa in B.P.Rt. 3889 dated 5-6-52. Srimathi Venkamma, daughter of Srimathi Jingappa has now come up to this court with a revision petition against the orders of the Bd of Rev referred to above. She has requested that S.no 239/2 and S.no 239/3 of Mankanja village may be assigned to her. She has contended

(1) that the Coll'r (view) that the Kumaki right over S.no 239/2 and S.no 239/3 reverted to the Inamdar, Sri Krishnappa Gowda on the ground that the lands were not in the actual or effective possession of the petitioner's predecessors since 1943, (is not correct) and

(2) that if the lands had been assigned in 1943, they should have been assigned only to the petitioner's mother, Srimathi Jingappa

4. Bane lands which exist only in Amara and Sulliya Maganes of Sullia Firka in Puttur taluk, South Kanara district carry the same privileges to the wargs to which they are attached as kumakis in the rest of the district. The difference between the kumakis and the banes

f P & cf

f P b cf

f P b cf

f 'S' at p 1 cf

pp 1-5 cf.

X at p 5 cf.

para on p 2 cf and para 7 on p 4 cf

para 7 on p 2 cf.

is that the former are limited to within 100 yards of a warg land while the latter are not so. According to B.S.G 15(1+0), a kumakidar should ~~not~~ be given preference over all other applicants when kumaki lands are assigned. The darkhast rules apply to the South Kanara district subject to the provisions in B.S.G 15(1+0) which grant certain concessions to the kumakidars and wargdars.

B.S.O. Vol I

Ibid

5. The first contention of the petitioner has been examined at great length in paras 3 and 4 of the Collr's proceedings at pp 7-8 C.F and may be perused. It will be seen therefrom that the plots were not in the effective enjoyment of Srimathi Jingappa or her heirs at the time of assignment. The petitioner's contention in this regard is clearly untenable. As regards the other contention of the petitioner, it is submitted that there was a loan on assignment of land from 1943-1949 the loan was lifted only in 1949, no doubt it is likely that the lands might have been assigned to her, if there had been no loan on assignment in 1943. But there was the loan then and the lands were not assigned. Subsequent to that, she lost effective possession over the lands. Therefore she cannot now be granted the lands. In the circumstances stated it is for orders whether the petition may be rejected straightaway or whether a report may be called for from the Bd of Revn in the first instance. No second appeal lies to Govt in such cases.

P.T. ante.

para 1 of G.O. 1523 Rev 11-6-49.

P1/(5)

11/8/53. 11/8/53

No second appeal lies to the Govt. For order whether the petn may be rejected straightaway

11/8/53

D.O

M(L.R)

(It is proposed to reject petition)

4.

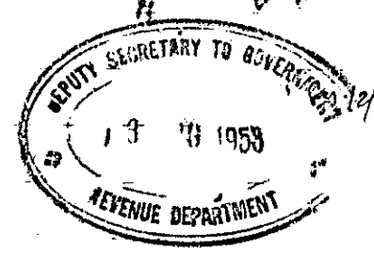
The petition may be rejected no second appeal lies

Macpherson
12.8.53

M. A. Moniekaran
13/8. 17(L.R.)

M circulate

MP 14/8/53.



12/8

To U.S

with reference to the orders in circulation above, a draft memo is submitted for approval.

MP
14/8/53, 14/8/53

14/8/53